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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/487, 383 01/18/00 BEDFORD

M 68019

022242 HM12/0815  
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EXAMINER

MELLER, M

ART UNIT PAPER NUMBER

1651

DATE MAILED: 08/15/00 6

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No. <b>09/487,383</b>	Applicant(s) <b>Bedford et al.</b>
	Examiner <b>Michael Meller</b>	Group Art Unit <b>1651</b>

Responsive to communication(s) filed on \_\_\_\_\_

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle* 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claim

Claim(s) 1-20 is/are pending in the application.  
 Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 Claim(s) \_\_\_\_\_ is/are allowed.  
 Claim(s) 1-20 is/are rejected.  
 Claim(s) \_\_\_\_\_ is/are objected to.  
 Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.  
 The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.  
 The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.  
 The specification is objected to by the Examiner.  
 The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).  
 All  Some\*  None of the CERTIFIED copies of the priority documents have been  
 received.  
 received in Application No. (Series Code/Serial Number) \_\_\_\_\_.  
 received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: GB/9715214.4

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892  
 Information Disclosure Statement(s), PTO-1449, Paper No(s). 3  
 Interview Summary, PTO-413  
 Notice of Draftsperson's Patent Drawing Review, PTO-948  
 Notice of Informal Patent Application, PTO-152

**-- SEE OFFICE ACTION ON THE FOLLOWING PAGES --**

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## **DETAILED ACTION**

### ***Oath/Declaration***

It does not identify the foreign application for patent or inventor's certificate on which priority is claimed pursuant to 37 CFR 1.55, and any foreign application having a filing date before that of the application on which priority is claimed, by specifying the application number, country, day, month and year of its filing.

Applicant claims priority for GB/9715214.4 filed 7/18/1997 in the preliminary amendment filed 1/18/00, but does not include this claim for priority in the instant oath.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 fails to find antecedent basis from claim 1 since claim 1 makes no mention of an animal feed. Claim 1 simply requires that an enzyme is given to an animal. Clarification and/or correction is required. Claim 13 also fails to find proper antecedent basis from claim 1 since claim 1 does not require an animal feed.

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***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claims 1-17, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by GB 2287867.

The reference teaches an animal feed containing a xylanase or a beta-glucanase, wheat cereal, fishmeal which is given to a chicken. The enzyme is added as a liquid, at the concentration claimed by applicants and the enzyme can be obtained from *Trichoderma* or *Aspergillus*, see abstract, page 3, lines 6-33, page 4, the three lines from the bottom, page 5, lines 9-27, page 7, lines 1-18. The composition is given to chickens in their feed, thus inherently it will prevent bacterial infections from bacteria such as *Salmonella*. The second feed claimed by applicants is also anticipated since the reference shows more than one component added to the feed which could be considered to be a second feed.

5. Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Bedford et al. (US 5,612,055).

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The reference teaches an animal feed containing a xylanase and/or a beta-glucanase, wheat cereal, fishmeal which is given to a chicken, see abstract, col. 7, lines 37-51, col. 8, lines 28-43, col. 10, lines 15-41. The composition is given to chickens in their feed, thus inherently it will prevent bacterial infections from bacteria such as *Salmonella*. The second feed claimed by applicants is also anticipated since the reference shows more than one component added to the feed which could be considered to be a second feed.

6. Claims 1-16, 19 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Clarkson et al.

The reference teaches an animal feed containing a xylanase and/or a beta-glucanase, wheat cereal, fishmeal which is given to a chicken, see abstract, col. 2, lines 45-46 and line 66, col. 3, lines 1-4, lines 39-41, col. 4, lines 57-end, col. 5, lines 1-15, col. 6, lines 14-18, col. 11, lines 13-end.

7. Claims 1-5, 9-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Hansen et al.

The reference teaches an animal feed containing a xylanase and/or a beta-glucanase, wheat cereal, fishmeal which is given to a chicken, see col. 1, lines 30-36, col. 2, lines 5-32, col. 4, lines 1-32, col. 7, lines 39-62, example 7, col. 12, lines 31-35, col. 13, line 15, col. 25, line 15.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2287867 in view of Bedford et al. (US 5,612,055).

GB 2287867 is discussed above. The reference does not teach that the xylanase can be obtained from any of the microorganisms of claim 18.

Bedford teaches that xylanases can be obtained from microorganisms such as *Bacillus*, see col. 8, lines 37-43 of Bedford.

It would have been obvious to one of ordinary skill in the art to use a xylanase from *Bacillus* as taught by Bedford since Bedford teaches that xylanases are routinely obtained from *Bacillus*.

10. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clarkson et al. in view of Bedford et al. (US 5,612,055).

Clarkson is discussed above. The reference does not teach that the xylanase can be obtained from any of the microorganisms of claims 17 or 18.

Bedford teaches that xylanases can be obtained from microorganisms such as *Bacillus* and *Trichoderma*, see col. 8, lines 37-43 of Bedford.

It would have been obvious to one of ordinary skill in the art to use a xylanase from *Bacillus* as taught by Bedford since Bedford teaches that xylanases are routinely obtained from *Bacillus*.

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11. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen et al. in view of GB 2287867.

Hansen is discussed above. Hansen does not teach the specific amounts of enzyme to feed amounts as claimed.

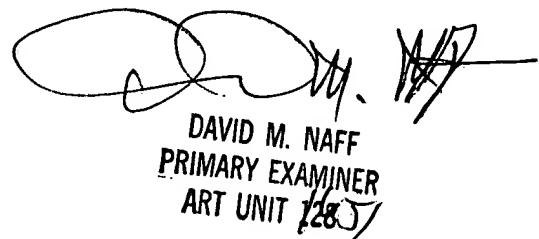
GB 2287867 teaches that enzymes such as xylanase can be used in an animal feed at a concentration of 0.00001-10g of xylanase protein per kg of feed, see page 3, last full paragraph.

Thus, it would have been obvious to one of ordinary skill in the art to use such specific amounts of enzyme since GB 2287867 teaches that enzymes such as xylanase can be used in an animal feed at a concentration of 0.00001-10g of xylanase protein per kg of feed.

### ***Conclusion***

No claim is allowed.

Any inquiries concerning this communication should be directed to Examiner Mike Meller at telephone number (703) 308-4230. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Michael Wityshyn, can be reached at (703) 308-4743. The Fax phone number for the art unit is (703) 308- 0294. Any inquiries of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.



DAVID M. NAFF  
PRIMARY EXAMINER  
ART UNIT 1651